

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

ARNULFO FONSECA,)	
)	
Plaintiff,)	
)	
-vs-)	No. 08-435-MJR
)	
CHARLES DAVID NELSON, Individually, and)	
in his official capacity as State's Attorney for)	
Saline County, KEITH BROWN, Individually,)	
and in his capacity as Sheriff of Saline County,)	
KEN CLORE, MARK LEVAUGHN, RANDY)	
BUTLER, MIKE JONES, BRAD NEAL, DAVID)	
BLAZIER, TODD FORT, STEVE SLOAN,)	
MONA NELSON, all Individually, SALINE)	
COUNTY, SHERIFF'S OFFICE OF SALINE)	
COUNTY, STATE'S ATTORNEY'S OFFICE)	
OF SALINE COUNTY, and VILLAGE OF)	
CARRIER MILLS,)	
)	
Defendants.)	

MOTION TO DISMISS

NOW COMES defendant, DAVID NELSON, State's Attorney of Saline County, by his attorney, Lisa Madigan, Attorney General of the State of Illinois, and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves to dismiss plaintiff's complaint.

In support thereof, it is stated:

1. Defendant is absolutely immune from liability for actions taken as part of his official duties under both state and federal law.
2. Plaintiff's due process rights were not violated at trial.
3. Statements made by defendant to the media were subject to an absolute privilege.

4. Violations of the Illinois Constitution of 1970 are not actionable in complaints for damages.

5. The eleventh amendment to the Constitution of the United States bars the claims against defendant in his official capacity.

6. Plaintiff has failed to state a cause of action for conspiracy.

7. Neither perjury, nor suborning perjury, are actionable in Illinois.

WHEREFORE, defendant respectfully requests that this honorable Court dismiss plaintiff's complaint.

Respectfully submitted,

CHARLES DAVID NELSON,

Defendant,

LISA MADIGAN, Attorney General
State of Illinois,

Attorney for Defendant,

Terence J. Corrigan, #06191237
Assistant Attorney General
500 South Second Street
Springfield, IL 62706
217/782-5819

Of Counsel.

By: /s/Terence J. Corrigan
Terence J. Corrigan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008, I electronically filed Motion to Dismiss with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

jcranley@actionlawcenter.com

jableyer@bleyerlaw.com

JCC@WAWPC.NET

lgo@WAWPC.NET

and I hereby certify that on August 25, 2008, I mailed by United States Postal Service, the document to the following non-registered participant:

None

Respectfully submitted,
s/Terence J. Corrigan
Assistant Attorney General
500 South Second Street
Springfield, IL 62706
(217)782-5819
(217) 524-5091 (facsimile)
tcorrigan@atg.state.il.us
#6191237